

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST, et al.,

Plaintiffs,

v.

DAN O' DONNELL, et al.,

Defendants.

2:04-CV-728-BES-LRL

ORDER

On September 14, 2006, Plaintiffs filed a Motion to Compel Appearance of Counsel for Sunbelt Construction & Development or, in the Alternative, Motion to Strike Answer (#90). On October 3, 2006, Plaintiffs filed a Notice of Non-Opposition to the Motion to Compel (#94) indicating that no opposition or other responsive pleading had been filed by Defendant Sunbelt Construction Development. The Magistrate Judge held a hearing on the Motion to Compel on December 1, 2006 and a Report and Recommendation (#97) was entered on December 4, 2006, recommending that Plaintiffs' Motion to Strike Answer should be granted. None of the parties filed objections to this recommendation. For the following reasons, this Court adopts and accepts the Magistrate Judge's Report and Recommendation (#97).

I. Discussion

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1) (2005). Further, under § 636(b)(1), if a party makes a timely objection to the magistrate judge's recommendation, then this Court is required to "make a de novo determination of those portions of the [report

and recommendation] to which objection is made.”¹ Id. Nevertheless, the statute does not “require[] some lesser review by [this Court] when no objections are filed.” Thomas v. Arn, 474 U.S. 140, 149–50 (1985). Instead, under the statute, this Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” Id. at 149. Similarly, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See United States v. Reyna-Tapia, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); see also Schmidt v. Johnstone, 263 F.Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in Reyna-Tapia as adopting the view that district courts are not required to review “any issue that is not the subject of an objection.”). Thus, if there is no objection to a magistrate judge’s recommendation, then this Court may accept the recommendation without review. See e.g., Johnstone, 263 F.Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation to which no objection was filed).

In this case, none of the parties filed an objection to the Magistrate Judge’s Report and Recommendation. Because no objections were filed, this Court is not required to review the Report and Recommendation, and therefore accepts it.

II. CONCLUSION

IT IS HEREBY ORDERED that this Court adopts and accepts the Magistrate Judge’s Report and Recommendation (#97). Accordingly, Plaintiffs’ Motion to Compel Appearance of

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¹ For an objection to be timely, a party must serve and file it within 10 days after being served with the magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1) (2005)

1 Counsel for Sunbelt Construction & Development or, in the Alternative, Motion to Strike
2 Answer (#90) is GRANTED.

3 DATED: This 27th day of February, 2007.
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8 UNITED STATES DISTRICT JUDGE
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